

An Open Letter to the New Gloucester Select Board on Committee Appointments

We, the undersigned residents of New Gloucester, wish to express our frustration with the June 27 Select Board meeting. Twenty-seven people applied to join or renew as members of our town committees and boards. Twenty-seven people offered their time and energy to serve and better our town. What happened at that meeting was a disservice to all of the applicants—and the entire New Gloucester community. We call on the Select Board to address all procedural inconsistencies. We suggest a series of actions at the end of this letter.

What Happened

The town website indicated that a large number of vacancies existed for many different committees and boards. But at the actual meeting, almost every incumbent who reapplied was given precedence or automatically appointed, regardless of whether or not they followed the application procedures, as outlined in the town's [Application for Committee Membership](#) (PDF).

The application procedures for serving on committees are vague and applied inconsistently. The criteria and process for reviewing and ranking applications are not clear or consistent. This results in an appearance of bias and discrimination, which leaves the town open to potential lawsuits.

How This Happened

As the Board started its deliberation on the first set of committee appointments, Chair Peter Bragdon contended that if a committee or board member is not reappointed, the town could be sued for failing to follow precedent. We believe this was based on a misreading of the Maine Municipal Association's Municipal Officers Manual (see Appendix I), which states,

Employees and officials who are hired or appointed for a specific term sometimes develop a property interest in their positions based on what the courts call "a reasonable expectation of continued employment." This "reasonable expectation" usually develops as a result of a series of reappointments or contract renewals that occur without any meaningful review and discussion of the person's performance. The decision to reappoint or renew is handled as a mere formality, creating the impression that the person has the job as long as he or she wants it. A "reasonable expectation" also may result from statements made by the supervisor or board to the person which create this impression.

First of all, it is likely that this statement is intended to apply to officials such as the Public Health Officer or the General Assistance Administrator, not to volunteers on boards or committees. The decision to reappoint in New Gloucester is not "a mere formality." Members of boards and committees have to fill out an application and follow the process if they wish to be reappointed, just like any other job applicant.

More importantly, there is no precedent here. It's simply untrue that members of New Gloucester boards and committees seeking to be reappointed have always been

reappointed. And until recently, the number of applications has not exceeded the number of open positions. Thus, the fact pattern for claiming that a standard for automatic reappointments is very different when there is competition for a position.

Furthermore, if Chair Bragdon's reading were correct, an appointment to a board or committee would be a de facto lifetime appointment, which would be exclusionary and certainly not the outcome anyone would intend or hope for.

The idea that reappointment is guaranteed or that priority is given to those with previous service is a new invention by the Board that does not exist in writing in town documents. In fact, the town's [Application for Committee Membership](#) (PDF) states "There is Value in Diversity." By appointing the same people in perpetuity, for the most part, the Board has shown that it rejects this principle.

Why This Happened

Chair Bragdon consulted with an attorney from the Maine Municipal Association (MMA) several days before the meeting (see Appendix II). An attorney's job is to protect a client from risk so it is natural that their advice would be to exercise caution. In this case, the perfunctory advice from the MMA attorney was based on incomplete and incorrect information provided by Chair Bragdon, who informed the MMA attorney that

The only standards that are set forth at this time is if a person fails to attend meetings and do the committee work they will not be given priority for reappointment. We also give priority to someone that is not already serving on a committee. If someone is not serving on any committee and applies for an open seat, they would get priority over someone who applied and already serves on another committee. Those are the two standards listed for boards and committees application process.

Neither of those criteria exist in the town's [Bylaws for Boards and Committees](#) (PDF). The policies section attached to the Boards and Committees Application does state "Low attendance will be taken into account at re-appointment time." But otherwise, there is surprisingly little overlap between the Bylaws for Boards and Committees and the Application for Boards and Committees. Nowhere does it say that priority should be given to someone not already serving on a board or committee. The MMA attorney did not ask any follow-up questions. It does not appear that Chair Bragdon consulted the town's actual attorney, as recommended by the MMA attorney.

The Confusing Town Committee Appointments

The sudden interjection of this new policy doesn't make sense.

Policies were not followed or were followed inconsistently and the meeting was subsequently chaotic and disorganized:

- **Board members were unprepared.**

The unexpected nature of this announcement meant that Board members were clearly unprepared to discuss the process, nor were they able to fully to understand or interpret the summary provided by Chair Bragdon. They did not have the benefit of the actual language in the Municipal Officers Manual, the advice provided by the MMA counsel, or any guidance provided by the town attorney. At least some members of the Board stated they were convinced that they were required to reappoint current members, if only as a precaution.

- **Applications and following procedures were required inconsistently.**
Candidates for vacancies were told to complete the application form on the town website. Yet some candidates who provided little information still received reappointment. The most egregious example of bias was when three qualified women submitted completed applications for the Budget Committee and attended the meeting, but the Board chose to appoint two men who submitted incomplete applications and did not attend the meeting. See the [Agenda Packet, June 27, 2022, Special Meeting](#) (PDF).
- **Attendance by candidates was inconsistently enforced.**
Candidates were advised to attend the meeting to introduce themselves, which is not required, according to the form. In fact, Deputy Clerk Sharlene Myers said that she had told some applicants that they did not have to attend the meeting. Yet, once the discussion of candidates began, it became clear that attendance could be a deciding factor in their application.
- **The requirement of letters of support has been inconsistent, depending on the committee.**
Letters and comments that were deemed crucial for applicants to the DEI committee and the School Board appeared to be unnecessary at the June 27 meeting.
- **Public comments were not allowed.**
Public comments were invited at the meeting, until Chair Bragdon indicated that people attending the meeting who wished to speak about board and committee appointments should wait until later in the meeting. When one person tried to do just that, they were told that they should have spoken during public comment.
- **The policy of serving on multiple committees is inconsistently applied.**
The application form suggests that service on another committee can be considered but it does not forbid it. In fact, several people currently serve on multiple town committees and boards. Limiting service to a single committee overrides possible selection of someone with extensive experience in the area of more than one committee. Either way, the policy must be more precisely and consistently applied.
- **Board members followed inconsistent ranking procedures.**
Some members of the Select Board indicated that they had a rating system and shared their order rankings, while others chose to simply put forth a motion with the slate that

they selected without sharing any reason or analysis of the candidate's credentials. This unclear and uneven process for choosing citizens to serve our town is potentially discriminatory and could generate lawsuits. It does not encourage participation in the democratic process of our town.

- **Candidates were given inconsistent messages about the need to present themselves.**

Candidates were discouraged from introducing themselves, despite believing that doing so was part of the application process. At least one applicant who was not reappointed left the meeting before his application was discussed, because the Board had made it clear that existing committee members would be reappointed. He was not given an opportunity to address questions about his performance on the committee. Issues that were presented appeared to be hearsay, rather than quantifiable evidence available to all Board members and applicants.

New Gloucester Deserves Better

The lack of a well-defined application process and clearly defined selection criteria looked too much like a backdoor system that enables bias. The constantly shifting rules erode any faith the public has in the Select Board. We ask:

- Why were the criteria for committee and board service not decided upon before the appointments were brought forward?
- Why wasn't the full Select Board apprised of the potential issue with reappointments when the Chair pursued this issue in the days before the meeting?
- Why wasn't the process halted until the Board could consult further legal counsel?
- Why did Chair Bragdon contradict his own assertion that incumbents had to be reappointed and vote against doing this?

Our town deserves better. We know the Select Board can do better. We call on the Select Board to:

1. Reverse all appointments to boards and committees for which there were more applicants than open seats, as provided by the town's [Bylaws for Board and Committees](#), which state

The Board or Committee may reconsider any decision at the same meeting or at a subsequent meeting within 30 days of its original decision, provided, however, that both a vote to reconsider any action taken pursuant thereto shall occur and be completed within said 30 days.

2. Appoint members to these board and committee seats without privileging the reappointment of incumbent board and committee members and with a fair and open process for adjudicating attendance issues.

3. By October 1, 2022, develop and adopt processes for the creation of town policies and procedures including:
 - a. the process for drafting proposed policies. For example, in workshops or meetings that are publicly recorded, etc.
 - b. the format for public input during the proposed policy making process. For example, an open meeting before any policies are drafted.
 - c. the process for public input on the proposed policies. For example, the notification of a public hearing and public comment period on any revised or draft policies.
 - d. the process for the adoption of proposed policies and their effective date. This could be done with assistance from the town attorney to expedite the process.
4. Draft new policies for a fair and consistent committee appointment process by December 1, 2022.
5. Adopt new policies by February 1, 2023.

Sincerely,

1. Greta Atchinson
2. Peg Becksvoort
3. Chris Becksvoort
4. Jason Campbell
5. Matthew Caouette
6. Frank Chambers
7. Penny Collins
8. Misty Coolidge
9. Shane Cummings
10. Carole Cummings DeTroy
11. Joan Dempsey
12. Leslie Downes
13. Cameron Dufty
14. Melissa Sturgis Elie
15. Ritu Esbjorn
16. Julie Fralich
17. Laura Fralich
18. Carol Gillis
19. Paul Gillis
20. Adam Gilman
21. Sarah Gusky Kemer
22. Diantha Grant
23. Donald Grant
24. Mary Beth Johnson

25. Thomas Johnson
 26. Lauren Jordan
 27. Thomas Jordan
 28. Stephen Kappes
 29. Diane Lamson
 30. Sasha Nyary
 31. Nick Planson
 32. Kathleen Potter
 33. Alyson Spencer-Reed
 34. Rachel Spencer-Reed
 35. Colleen Strickler
 36. Laura Jane Sturgis
 37. Roberta (Bert) Troughton
 38. Patricia A. Vampatella
 39. Noreen Williams
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Appendix I

Maine Municipal Association. *Municipal Officers Manual*, page 183.

Failure to Re-Appoint

Employees and officials who are hired or appointed for a specific term sometimes develop a property interest in their positions based on what the courts call “a reasonable expectation of continued employment.” This “reasonable expectation” usually develops as a result of a series of reappointments or contract renewals that occur without any meaningful review and discussion of the person’s performance. The decision to reappoint or renew is handled as a mere formality, creating the impression that the person has the job as long as he or she wants it. A “reasonable expectation” also may result from statements made by the supervisor or board to the person which create this impression.²¹ Where a property interest based on a “reasonable expectation” exists, the employee or official is entitled to a due process notice (i.e., written notice that he or she may not be reappointed and why) and hearing and a determination of “just cause” if the board or official wants to hire or appoint someone else when the employee’s or official’s term is ending.²² To avoid creating such an expectation, it is important to conduct a meaningful performance evaluation before re-appointing a person or renewing his or her contract and to emphasize that this practice will be followed in subsequent years.

If an official or employee has no reasonable expectation of continued appointment or employment, and the board or other supervisor decides not to reappoint or renew a contract, any verbal or written explanation of the decision must be worded carefully in order to avoid

damage to the person's reputation. For example, when deciding not to reappoint a long-time member of the planning board, the decision could say something like "Thank you for your years of valuable service to the town. We feel that you have done a good job, but believe that it is time to involve new people in the work of the board."

Appendix II

From: Peter Bragdon <pbragdon@newgloucester.com>

Sent: Thursday, June 23, 2022 3:44 PM

To: Legal Services Dept <legal@memun.org>

Cc: Paul Larrivee <paul.larrivee@gmail.com>; Town Manager <townmanager@newgloucester.com>

Subject: New Gloucester - question

CAUTION: This email originated from outside your organization. Exercise caution when opening attachments or clicking links, especially from unknown senders.

Hi

I have a general question about committee appointments.

Our town is appointing board or committee members at our next meeting on Monday. The Selectboard appoints applicants to various committees based on open positions.

The only standards that are set forth at this time is if a person fails to attend meetings and do the committee work they will not be given priority for reappointment. We also give priority to someone that is not already serving on a committee. If someone is not serving on any committee and applies for an open seat, they would get priority over someone who applied and already serves on another committee. Those are the two standards listed for boards and committees application process.

With that said, There is a push for 'new blood' on committees.

Would it be inappropriate to not reappoint someone to a committee for someone new to serve? In example, John Doe has served the budget committee faithfully for 6 years and wants to be reappointed. He has attended every meeting and completed all the work required. Would it be wrong to remove him and replace him with someone new? Would this be considered discipline and we need to follow statute to remove a municipal official?

Sorry about the weird formatting, I am not sure what happened.

Thanks
Peter Bragdon

PETER R. BRAGDON
Chair - New Gloucester
Municipal Officers

From: Legal Services Dept <legal@memun.org>
Sent: Friday, June 24, 2022 3:52:07 PM
To: Peter Bragdon <pbragdon@newgloucester.com>
Subject: RE: New Gloucester - question

Good afternoon Peter,

Please find attached for your reference an excerpt from Chapter 9 of the MMA Municipal Officers Manual (available [on our website here](#)) which explains that the answer to your question depends on whether New Gloucester has provided, either verbally or in writing (i.e., charter, ordinance, board by-law, or other policy), for members of the budget committee (to use your example) to have a duly noticed hearing prior to not being re-appointed.

If committee members have not been provided with a basis to expect continued service and due process prior to having that service discontinued, then the body with the authority to appoint persons to the committee in question would also have the prerogative to appoint an otherwise qualified person to fill the position instead. The last page of the attached excerpt points out that it would be important to communicate the transition carefully, to avoid damaging the outgoing member's reputation.

On that note, if there is a sense that the person may be displeased by being voted off the island, it would probably be wise to bounce your proposed course of action off New Gloucester's town attorney before proceeding, to make sure they agree with my advice. The reason is that the town attorney would be responsible for defending the town in any appeal of the select board's decision.

I hope this is helpful, and you are welcome to circle back with any follow up questions.

Best,
Garrett

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